



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
<http://www.epa.gov/region08>

DOCKET NO.: CWA-08-2002-36

IN THE MATTER OF:

A. E. STALEY MANUFACTURING CO.

Respondent

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FINAL ORDER

Pursuant to 40 C.F.R. § 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby ORDERED to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

December 10, 2002
DATE

SIGNED
Alfred C. Smith
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:

A.E. Staley Manufacturing Company

Monte Vista, Colorado

Respondent.

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**COMBINED COMPLAINT AND
CONSENT AGREEMENT**

Docket No. **CWA-08-2002-36**

Complainant, United States Environmental Protection Agency, Region 8 ("EPA") and Respondent, A.E. Staley Manufacturing Company, ("Staley"), by their undersigned representatives, hereby consent and agree as follows:

1. This matter is subject to 40 C.F.R. Part 22. This Combined Complaint and Consent Agreement ("Consent Agreement") is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. EPA has jurisdiction over this matter pursuant to sections 309(g)(1)(A) and 309(g)(2)(B) of the Clean Water Act ("Act"), 33 U.S.C. §§ 1319(g)(1)(A) and 1319(g)(2)(B).
3. Staley admits the jurisdictional allegations contained herein, but does not admit any of the other legal conclusions or factual allegations contained herein.
4. Staley waives its right to a hearing before any tribunal and to contest therein any issue of law or fact set forth in this Consent Agreement.
5. EPA asserts that settlement of this matter is in the public interest, and EPA and Staley agree that entry of this Consent Agreement and Final Order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.

6. This Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Staley and Staley's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Staley including, but not limited to, any transfer of assets or real or personal property shall not alter Staley's responsibilities under this agreement.

7. This Consent Agreement contains all terms of the settlement agreed to by the parties.

8. Staley is a corporation under the laws of the state of Delaware since 1987, with its principal place of business located at 2200 East Eldorado Street in Decatur, Illinois.

9. Staley is a "person" within the meaning of section 502(5) of the Act,
33 U.S.C. § 1362(5).

10. Staley owns and/or operates a potato starch production plant ("Facility") located at 1001 North County Road 3E in Monte Vista, Colorado. The Facility includes, but is not limited to, the building(s) used for processing of potatoes, loading and unloading docks, an anaerobic lagoon used for pretreatment of waste, and a bypass which discharges directly into the Monte Vista Veteran's Publically Owned Treatment Works ("Monte Vista POTW").

11. Process wastewater from the Facility is discharged to the Monte Vista POTW, owned and operated by the City of Monte Vista, which is a "treatment works" as defined in section 212(2)(A) of the Act, 33 U.S.C. § 1292(2)(A) and a POTW as defined in 40 C.F.R. § 403.3(o).

12. The City of Monte Vista was created by or pursuant to State law and has jurisdiction over disposal of sewage, industrial wastes, or other wastes and is therefore a "municipality" within the meaning of section 502(4) of the Act, 33. U.S.C. § 1362(4), and a "person" within the meaning of section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.

13. The Facility has discharged process wastewater to the Monte Vista POTW at times relevant to this Consent Agreement.

14. Staley grinds potatoes to produce starch at the Facility. Staley's process wastewater contains concentrated potato waste, which has been shown to contain biochemical oxygen demand (BOD) and total suspended solids (TSS), and is considered a "pollutant" within the meaning of section 502(6) of the Act, 33 U.S.C. § 1362(6).

15. Staley's process wastewater is considered an "Indirect Discharge" or "Discharge" ("Discharge") within the meaning of 40 C.F.R. § 403.3(g), and Staley's Facility is an "Industrial User" within the meaning of 40 C.F.R. § 403.3(h).

16. The Monte Vista POTW is authorized under Colorado Discharge Permit System ("CDPS") permit CO-0036927 issued by the Colorado Department of Public Health and Environment ("CDPHE") to discharge treated wastewaters into an unnamed ditch which flows into the Rio Grande River. The regulations at 40 C.F.R. Part 122 apply to the Monte Vista POTW.

17. The unnamed ditch and the Rio Grande River are "waters of the United States" as defined by 40 C.F.R. § 122.2 and, therefore, "navigable waters" within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7).

18. Section 307(b) of the Act, 33 U.S.C. § 1317(b), directs the Administrator of EPA to establish Pretreatment Standards applicable to indirect discharges to control pollutants. Pursuant to sections 307(b) and (c) of the Act, 33 U.S.C. §§ 1317(b) and (c), the Administrator of EPA promulgated "General Pretreatment Regulations for Existing and New Sources of Pollution" ("General Pretreatment Regulations"), codified at 40 C.F.R. part 403. The General Pretreatment regulations govern the introduction by "Users" and "Industrial Users" into a POTW of any pollutants that are incompatible with the POTW's operation, including pollutants that cause Pass Through [as defined in 40 C.F.R. § 403.3(n)] or Interference [as defined in 40 C.F.R. § 403.3(i)] with the POTW's operation or contaminate sewage sludge.

19. "Pass Through" is defined at 40 C.F.R. § 403.3(n) as a Discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any

requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

20. Any pollutant, including but not limited to BOD and TSS, released in a Discharge which will cause Pass Through with the POTW, is specifically prohibited by 40 C.F.R.

§ 403.5(a)(1).

21. Under the provisions of 40 C.F.R. § 403.8, Monte Vista may develop and apply for approval of a locally implemented Industrial Pretreatment Program. Upon its approval by EPA, the responsibility to administer and enforce the Pretreatment Standards and requirements of an Industrial Treatment Program is transferred to Monte Vista. Until such transfer, EPA is the "Control Authority" for enforcing the Federal Pretreatment Standards and requirements. Monte Vista has not applied for such approval and, consequently, EPA remains the "Control Authority."

22. Therefore, at all times relevant to this Consent Agreement, the Regional Administrator for EPA Region 8 is and has been the "Control Authority" within the meaning of 40 C.F.R.

§§ 403.12(a) and 413.02(g) for enforcement of the Federal Pretreatment Standards.

23. The Town of Monte Vista issued an "Industrial Waste Management Program Permit IWMP01" ("Staley's Permit") to Staley limiting the amount of pollutants which could be discharged to the Monte Vista POTW. The Permit was effective February 1, 1997. The permit was to expire on February 1, 2001, but was administratively extended.

24. Analyses of microbial data from 1997 and into 2000 found that Staley's Discharge contained non-settling bacteria which EPA asserts passed through the POTW and caused exceedances of the Monte Vista POTW's CDPS permit.

25. The Town of Monte Vista has exceeded its CDPS permit (CO-0036927) limits on numerous occasions from October 1997 to December 2001.

26. On or about August 8, 2001, EPA issued a Compliance Order, Docket No. CWA-2001-34 (“Compliance Order”), to Staley pursuant to section 309(a) of the Act citing alleged violations of section 307 of the Act and the regulations promulgated at 40 C.F.R. Part 403. The Compliance Order directed Staley, among other things, to immediately take all actions necessary to cease and desist discharges to the Monte Vista POTW that may cause or contribute to Pass Through or Interference with the Monte Vista POTW’s operation or interfere with sewage sludge use or disposal.

27. EPA has concluded that Staley, as outlined below, has exceeded its permit limits at least five (5) times which EPA believes correspond with exceedances that Monte Vista had of its CDPS permit: **A.E. Staley Manufacturing Company Permit Exceedances:**

Date	Parameter	Frequency	Reported	Limit	% Exceed
Mar 1999	TSS	Daily Max	4333	3900	11%
Mar 1999	TSS	Daily Max	4352	3900	12%
May 2000	TSS	Daily Max	6727	3900	72%
May 2000	TSS	Weekly Ave	2652	2600	2%
Nov 2001	BOD	Daily Max	6247	5400	16%

Monte Vista Permit Exceedances:

Date	Parameter	Frequency	Reported	Limit	% Exceed
Mar 1999	TSS	Monthly	78	75	20%
	TSS	Weekly Max	174	110	58%
May 2000	TSS	Monthly	88	75	17%
	TSS	Weekly Max	124	110	13%
Nov 2001	BOD	Monthly	42	30	40%
	BOD	Weekly Max	60	45	33%

The exceedances of the limits in Staley's permit issued by Monte Vista are separate instances of Pass Through and therefore are violations by Staley of 40 C.F.R. § 403.5(a)(1).

28. Pursuant to section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and based in part on the nature of the violations and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is the amount of Thirty-Five Thousand Dollars (\$35,000).

29. Within thirty days (30) of receipt of the Consent Agreement and the Final Order issued by the Regional Judicial Officer, Staley shall pay the agreed upon civil penalty in the amount of Thirty-Five Thousand Dollars (\$35,000) by remitting a cashier's or certified check payable to "Treasurer, United States of America," to:

EPA - Region 8
(Regional Hearing Clerk)
P.O. Box 360859M
Pittsburgh, PA 15251

The payment must reference Staley's name and facility address, the EPA Docket Number of this action, and Staley's Taxpayer Identification Number (T.I.N.).

A copy of the transmittal of payment shall be sent simultaneously to the following address:

Regional Hearing Clerk
U.S. EPA, Region 8 (8RC)
999 18th Street, Suite 300
Denver, Co 80202-2466

and

James H. Eppers
Senior Enforcement Attorney
U.S. EPA, Region 8 (8ENF-L)
999 18th Street, Suite 300
Denver, Co 80202-2466.

30. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts

owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if the penalty is not paid when due. Interest will be assessed at the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due. Any such penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 40 C.F.R. §§ 102.13(d) and (e).

31. This Consent Agreement shall not relieve Staley of its obligation to comply with all applicable provisions of federal, state or local law or the Compliance Order described in Paragraph 26 above. EPA acknowledges that Staley has, heretofore, complied with the terms of the Compliance Order, as amended, and provided that Staley continues its cessation of discharging to the Monte Vista POTW, Staley has no continuing obligation under the Compliance Order. Should Staley recommence discharging to the Monte Vista POTW, the requirements of the Compliance Order shall recommence.

32. Failure by Staley to comply with any of the terms of this Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

33. Nothing in this Consent Agreement shall be construed as a waiver by the U.S. EPA of

its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Staley's failure to perform pursuant to the terms of this Consent Agreement.

34. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this Consent Agreement and to execute and legally bind that party to this Consent Agreement.

35. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.

36. This Consent Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the violations alleged in this Consent Agreement.

37. This Consent Agreement resolves Staley's liability for civil penalties under sections 309(d) and 309(g) of the Act, 33 U.S.C. §§ 1319(d) and (g), for the alleged violations contained in this Consent Agreement and for any incident of Pass Through or Interference based on information known to EPA as of the date of settlement. Notwithstanding the above, this Consent Agreement shall not in any case affect EPA's right to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

38. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this Consent Agreement.

In the Matter of: A.E. Staley Manufacturing Company
Docket No. **CWA-08-29002-36**

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8

Date: 9/27/02 SIGNED

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

A.E. Staley Manufacturing Company

Date: _____ By SIGNED

Marc W. Larson
Assistant Secretary

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT, CONSENT AGREEMENT/FINAL ORDER** in the matter of **A. E. STALEY MANUFACTURING CO., DOCKET NO.; CWA-08-2002-36** was filed with the Regional Hearing Clerk on December 10, 2002.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Jim Eppers, Enforcement Attorney, U.S. EPA - Region VIII, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt to:

Daniel J. Dunn, Esq.
Holme, Roberts & Owen
1700 Lincoln Street Suite 4100
Denver, CO 80203.

December 10, 2002

SIGNED _____
Tina Artemis
Regional Hearing Clerk

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON DECEMBER 10, 2002.